

1 *Nat'l Ass'n*, No. 18-522, 2019 WL 1099834, at *2 (S.D. Cal. Mar. 8, 2019). California law also
 2 bars tort recoveries “for ‘purely economic losses that may be recovered in a contract action,’”
 3 such as those Mr. Meisner requests here. *Margaretha Natalia Widjaja v. JPMorgan Chase Bank,*
 4 *N.A.*, No. 19-7825, 2019 WL 8108716, at *7 (C.D. Cal. Nov. 19, 2019) (quoting *Lusinyan v.*
 5 *Bank of Am.*, *N.A.*, No. 14-9586, 2015 WL 12777225, at *4 (C.D. Cal. May 26, 2015)). “Multiple
 6 courts have applied the economic loss rule to bar a plaintiff’s claim against a bank arising from
 7 fraudulent activity.” *Id.*

8 The claim for breach of contract is also dismissed. The contract between Chase and Mr.
 9 Meisner is incorporated into the complaint by reference. *See* Compl. ¶ 54; *Knievel v. ESPN*, 393
 10 F.3d 1068, 1076 (9th Cir. 2005). According to its terms, if “funds from a deposit become
 11 available” and can be withdrawn, “that does not mean the check or other item” is “good” or “has
 12 been paid by the paying bank.” Deposit Account Agreement, Req. J. Not. Ex. B at 4, ECF No. 6-
 13 1. These provisions contradict Mr. Meisner’s allegations and render his contract claim
 14 implausible as currently pleaded. Because the agreement also provides that “[n]o one,” not even
 15 Chase’s employees, “can guarantee . . . that a check will not be returned,” *id.*, Mr. Meisner’s
 16 allegations about a bank employee’s reassurances do not support his claim that Chase breached its
 17 implied duty of good faith and fair dealing. *See Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 349–50
 18 (2000) (“The covenant [of good faith and fair dealing] . . . cannot be endowed with an existence
 19 independent of its contractual underpinnings.”).

20 The court does not reach Mr. Meisner’s unpled theories, which he advances for the
 21 first time in opposition to Chase’s motion, *see* Opp’n at 17–19, that the express contract terms are
 22 ambiguous or were amended or modified. *See Apple Inc. v. Allan & Assocs. Ltd.*, 445 F. Supp. 3d
 23 42, 59 (N.D. Cal. 2020) (“[T]he complaint may not be amended by the briefs in opposition to a
 24 motion to dismiss.” (citation omitted)).

25 Mr. Meisner is granted leave to amend if possible within the confines of Rule 11. *See*
 26 *Sonoma Cty. Ass'n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013)
 27 (“Courts may decline to grant leave to amend only if there is strong evidence of ‘undue delay, bad
 28 faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by

1 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of
2 the amendment, [or] futility of amendment, etc.”” (quoting *Foman v. Davis*, 371 U.S. 178, 182
3 (1962))).

4 The motion is **granted** with leave to amend. Any amended complaint must be filed
5 **within fourteen days**. This order resolves ECF No. 5.

6 IT IS SO ORDERED.

7 DATED: November 30, 2020.


CHIEF UNITED STATES DISTRICT JUDGE